

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 18-1305V

UNPUBLISHED

SUSAN ANN KUHN,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: August 17, 2020

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA)

*Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for Petitioner.*

*Sarah Christina Duncan, U.S. Department of Justice, Washington, DC, for Respondent.*

### **DECISION AWARDING DAMAGES<sup>1</sup>**

On August 28, 2018, Susan Ann Kuhn filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza (“flu”) vaccine administered to her left shoulder on September 19, 2017. Petition at 1. Petitioner further alleges that her injury last for more than six months. Petition at 6. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On June 10, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On August 17, 2020, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$90,100.00 consisting of \$90,000.00 in actual and projected pain and suffering, and \$100.00 for past

<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

unreimbursable expenses. Proffer at 2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$90,100.00 (consisting of \$90,000.00 in actual and projected pain and suffering, and \$100.00 for past unreimbursable expenses) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**

Brian H. Corcoran  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS**

SUSAN ANN KUHN,

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SECRETARY OF HEALTH AND HUMAN  
SERVICES,

Respondent.

No. 18-1305V

Chief Special Master Corcoran  
ECF

**RESPONDENT'S PROFFER ON AWARD OF COMPENSATION**

On April 15, 2020, Chief Special Master Corcoran issued Findings of Fact, finding that the onset of petitioner’s left shoulder injury related to vaccine administration (“SIRVA”) occurred within 48 hours of vaccination. ECF No. 28 at 2, 7. On June 8, 2020, the Secretary of Health and Human Services (“respondent”) filed an Amended Vaccine Rule 4(c) Report advising that, in light of Chief Special Master Corcoran’s Findings of Fact ruling that the onset of petitioner’s left arm pain occurred within 48 hours of vaccination, and the medical evidence submitted in this case, respondent did not dispute that petitioner had satisfied all legal prerequisites for compensation under the Vaccine Act. ECF No. 30 at 2, 8-9. Thereafter, on June 10, 2020, Chief Special Master Corcoran entered a Ruling on Entitlement, finding petitioner, Susan Ann Kuhn, entitled to Vaccine Act compensation for her Table SIRVA injury. ECF No. 31.

**I. Items of Compensation**

**A. Pain and Suffering**

Respondent now proffers that, based on the Chief Special Master's entitlement decision and the evidence of record, Susan Ann Kuhn should be awarded \$90,000.00 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

**B. Past Unreimbursable Expenses**

Evidence supplied by petitioner documents Susan Ann Kuhn's expenditure of past unreimbursable expenses related to her vaccine-related injury. Respondent now proffers that, based on the Chief Special Master's entitlement decision and the evidence of record, petitioner should be awarded past unreimbursable expenses in the amount of \$100.00, as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(1)(B). Petitioner agrees.<sup>1</sup>

**II. Form of the Award**

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to Susan Ann Kuhn should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following<sup>2</sup>: a lump sum payment of \$90,100.00,

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<sup>1</sup> The parties have no objection to the amount of the proffered award of damages. Assuming the Chief Special Master issues a damages decision in conformity with this proffer, the parties waive their right to seek review of such damages decision. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the Chief Special Master's June 10, 2020 entitlement decision.

<sup>2</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

representing compensation for pain and suffering (\$90,000.00), and past unreimbursable expenses (\$100.00), in the form of a check payable to petitioner, Susan Ann Kuhn.

**III. Summary of Recommended Payments Following Judgment**

Lump sum payable to petitioner, Susan Ann Kuhn: **\$90,100.00**

Respectfully submitted,

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Acting Director  
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s/ Sarah C. Duncan  
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DATED: August 17, 2020